

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HALL & ASSOCIATES,

Plaintiff,

v.

**U.S. ENVIRONMENTAL PROTECTION
AGENCY,**

Defendant.

Civil Action No. _____

INDEX OF EXHIBITS IN SUPPORT OF PLAINTIFF'S COMPLAINT

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Exhibit 1

Nov. 20, 2013 NJ Blending
Clarification Request –
EPA-HQ-2018-010345

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207

Reply to E-mail:
ethomas@hall-associates.com

August 7, 2018

Via FOIA Online

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: Freedom of Information Act Request for November 20, 2013 Email in Full

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2.

Background

On October 25, 2013, Hall & Associates ("H&A") submitted a FOIA request to EPA entitled EPA-HQ-2014-000552. On December 24, 2013, EPA delivered the final response to this request, including the attached November 20, 2013 redacted email. The attached document was partially withheld under the deliberative process privilege. On May 22, 2018 the D.C. District Court in *Hall & Associates v. EPA* (15-cv-1055), held that "EPA made a nonacquiescence decision with respect to the Eighth Circuit's *Iowa League of Cities* opinion as of November 19, 2013." Therefore, it is clear that EPA made a decision, at the latest, on that date and any document developed after November 19, 2013 may not be withheld under the deliberative process privilege.

Request

In light of the recent D.C. District Court decision, this Request seeks the attached email in full. The D.C. District Court found that EPA rendered a non-acquiescence decision, at the latest, on November 19, 2013 and therefore, as this document does not predate November 19, 2013, it may not be classified as pre-decisional or deliberative and must be released in full.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsive to this request and send it to the undersigned at the above address. If the requested record is withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

If you have any questions regarding this request, please do not hesitate to contact this office.

Respectfully,

/s/ Erin Thomas

Erin Thomas
Hall & Associates
1620 I St., NW
Washington, DC 20006-4033
(202) 463-1166
ethomas@hall-associates.com

From: DeMarco, Carol
To: Theis, Joseph; Denton, Loren; Pollins, Mark
Cc: Zimny, James; Vinch, James
Subject: PVSC and blending (PLEASE READ)
Date: Wednesday, November 20, 2013 4:45:24 PM
Importance: High

Joe, Loren and Mark,

At the 11/19 meeting EPA/DOJ had with the State of New Jersey re: PVSC, the state asked EPA for anything the agency has put in writing about how it's handling the 8th Circuit's Iowa League of Cities decision. PVSC was not at the meeting, just the state attended. Is there anything in writing I can share with NJDEP on this issue?

[REDACTED]

As you may recall, John Hall (and Paul Calamita) have served as PVSC's counsel. It's not clear PVSC is still using Hall for the CSO enforcement case, but apparently Hall remains involved on the permitting front because he recently called NJDEP about the draft PVSC permit.

Thanks,
Carol

Carol Lynn DeMarco, Attorney-Advisor
United States Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Water Enforcement Division
1200 Pennsylvania Ave., NW (Mail Code 2243A)
Washington, DC 20460
Phone: (202) 564-2412
Fax: (202) 564-0024
Email: demarco.carol@epa.gov

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from your machine and all storage media whether electronic or hard copy.

Exhibit 2

2018 Blending Rulemaking Request – EPA-HQ-2018-010997

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207

Reply to E-mail:
ethomas@hall-associates.com

August 28, 2018

Via FOIA Online

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: Freedom of Information Act Request for Records Related to Announced Rulemaking on Blending

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. Section 552, as implemented by the Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 2. For purposes of this request, the definition of “records” includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages (including e-mails to and from personal e-mail accounts), minutes, handouts, policy statements, data, technical evaluations or analysis, and studies.

Background

On April 17, 2018, EPA announced that it will be meeting with and reaching out to states, local communities, and stakeholders regarding a new rulemaking to clarify the use of blending by wastewater treatment plants. This proposed rulemaking has been named the “Peak Flows Management Rulemaking.”

Request

This request seeks all records at EPA HQ concerning:

1. Any documents prepared as part of the process for getting authorization to proceed with this proposed regulatory action, including any agency or inter-agency authorizations to proceed with the regulatory clarification activities announced by EPA on this topic.

2. Any documents, including any notices to OMB, or related background documents that describe the basis and background for why the Agency decided to undertake this regulatory action.
3. Any documents that describe the form or nature of the action being considered (*i.e.*, is this a possible regulatory or deregulatory action).
4. Any documents prepared as part of or in conjunction with this agency action that identifies or discusses the rule being considered for modification/clarification to allow blending to occur.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsive to this request and send it to the undersigned at the above address. If the requested record is withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary document is duplicated.

Respectfully,

/s/ Erin Thomas

Erin Thomas
Hall & Associates
1620 I St., NW
Washington, DC 20006
(202) 463-1166
ethomas@hall-associates.com

Exhibit 3

Blending Enforcement Orders

Request –

EPA-HQ-2018-008685

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207

Reply to E-mail:
ethomas@hall-associates.com

June 14, 2018

Via FOIA Online

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: Freedom of Information Act Request for Records Related to Enforcement Orders Regarding Blending

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages (including e-mails to and from personal e-mail accounts), minutes, handouts, policy statements, data, technical evaluations or analysis, and studies.

Background

On March 7, 2018, EPA sent a letter to the Association of Environmental Authorities of New Jersey in response to their July 21, 2017 letter to EPA seeking clarification on the use of blending at wastewater treatment facilities. EPA stated that the agency "has not issued a nationwide policy on the use of blending in wastewater treatment, and it does not have a categorical position regarding how the agency's regulations apply with regard to blending outside the 8th Circuit in light of the court's decision in *Iowa League of Cities v. EPA*, 711 F.3d 844 (2013)."

Request

This request seeks any and all records at EPA HQ concerning:

1. Any type of enforcement order or action where EPA was a party, within the past 3 years, that would or did classify blending as a bypass;

2. Any type of enforcement order or action where EPA was a party, within the past 3 years, that indicated blending may be implemented as an interim measure; and
3. Any and all documents, located at EPA Headquarters and EPA Region 2, associated with the attached Passaic Valley Sewerage Commission Administrative Order, including any draft versions of the attached Order.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsive to this request and send it to the undersigned at the above address. If the requested record is withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary document is duplicated.

Respectfully,

/s/ Erin Thomas

Erin Thomas
Hall & Associates
1620 I St., NW
Washington, DC 20006
(202) 463-1166
ethomas@hall-associates.com

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Passaic Valley Sewerage Commission
600 Wilson Avenue
Newark, New Jersey 07105

RESPONDENT

Proceeding pursuant to Section 309(a) of the Clean
Water Act, 33 U.S.C. § 1319(a)

**ADMINISTRATIVE ORDER ON
CONSENT**

CWA-02-2018-3009

NATURE OF THE ACTION

The Regional Administrator of Region 2 of the United States Environmental Protection Agency (“EPA”), acting on behalf of the Administrator of the United States Environmental Protection Agency, by the authority of the Federal Water Pollution Control Act (also referred to as the Clean Water Act, hereinafter “CWA” or “Act”), is issuing this Administrative Order on Consent (“Order”) pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), and alleges and orders as follows:

1. This is an administrative action brought against the Passaic Valley Sewerage Commission (“PVSC” or “Respondent”) pursuant to Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).
2. The EPA alleges that Respondent is in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), by having failed to comply with various terms and conditions of the Permits (“Permits”) issued by the New Jersey Department of Environmental Protection (“State” or “NJDEP”), as authorized by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), to Respondent’s Wastewater Treatment Plant (“WWTP”) and related appurtenances, and by causing unauthorized discharges of pollutants to waters of the United States.
3. Respondent’s alleged failure to comply with the terms and conditions as set forth in the Permits regarding the maximization of wet weather flow conveyance to the WWTP has caused unpermitted releases of sewage from Respondent’s sewer collection system, and other facilities connected to Respondent’s sewer collection system, into waters of the United States.
4. This administrative action requires Respondent to implement certain remedies, develop operating procedures and perform studies to maximize the conveyance of wet weather flows to the WWTP.

JURISDICTION AND STATUTORY AUTHORITY

5. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States except in compliance with the terms and conditions of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA § 402, 33 U.S.C. § 1342.
6. Section 502(4) of the Act, 33 U.S.C. § 1362(4) defines the term “municipality” as “a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State

law and having jurisdiction over disposal of sewage, industrial wastes or other wastes.”

7. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines the term “person” to include a municipality.
8. Section 502(6) of the CWA defines “pollutant” to include, *inter alia*, sewage. 33 U.S.C. § 1362(6).
9. Section 502(7) of the CWA defines navigable waters to be “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). The EPA regulations promulgated pursuant to the CWA define the term “waters of the United States” to include, among other things: 1) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; 2) all interstate waters; 3) all other waters such as intrastate lakes, rivers and streams (including intermittent streams), the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; 4) tributaries of waters of the United States; and 5) certain wetlands (including wetlands adjacent to these waters). 40 C.F.R. § 122.2.
10. Section 502(12) of the CWA defines “discharge of a pollutant” to mean, among other things, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
11. The term “point source” is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel...from which pollutants are or may be discharged.”
12. The term “facility” is defined in the regulations as “any NPDES ‘point source’ or any other facility... (including land or appurtenances thereof) that is subject to regulation under the NPDES program.” 40 C.F.R. § 122.2.
13. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the EPA may issue NPDES permits that authorize the discharge of any pollutant to navigable waters to “persons”, but only in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such terms and conditions as the EPA determines are necessary to carry out the provisions of the CWA.
14. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that a state may establish and administer its own permit program, and, after the EPA authorizes its program, may issue Section 402 permits.
15. Federal regulations set forth a list of minimum general conditions that all NPDES permits issued under State Pollutant Discharge Elimination System (“SPDES”) permitting programs must meet. 40 C.F.R. § 122.41(e) sets forth the General Condition for “Proper Operation and Maintenance” of facilities and systems. Section 122.41(e) states that a “permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit.”
16. The CWA’s standards for CSOs are described in the EPA’s Combined Sewer Overflow Control Policy (“CSO Control Policy”), which was published in the Federal Register on April 19, 1994 (59 Fed. Reg. 18688) and, on December 21, 2000, added to the CWA, in Section 402(q)(1), 33 U.S.C. § 1342(q)(1) (“Combined sewer overflows”).

17. Pursuant to Section 309(a) (3) of the Act, 33 U.S.C. § 1319(a)(3), "...whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by him, or by a State or in a permit issued under section 1344 of this title by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section."

RESPONDENT

18. PVSC was formed as an agency of the State of New Jersey pursuant to an Act of the State Legislature in 1902, N.J.S.A. 58:14-2, for the purpose of relieving the streams and rivers in its sewage and drainage districts from pollution, and has operated its conveyance system and treatment works continuously since then for that purpose. PVSC's principal place of business is located at 600 Wilson Avenue, Newark, New Jersey.
19. PVSC operates and maintains a WWTP designed to treat 330 million gallons per day ("MGD") as well as a 22-mile interceptor sewer line in order to serve approximately 1.4 million residents in 48 municipalities within Bergen, Essex, Hudson, Union and Passaic Counties. PVSC discharges, among other things, treated sewage from its WWTP through two outfall pipes to Upper New York Bay and Newark Bay, respectively. PVSC regulates wet weather flow to its WWTP through the operation of regulators that cause untreated sewage and stormwater to be discharged during wet weather events to the Passaic River through combined sewer overflow points located in the conveyance system upstream of its WWTP.
20. Because PVSC is a "public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes," it is a "municipality" within the meaning of Section 502(4) of the CWA, and a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. §§ 1362 (4) and (5).
21. Because PVSC discharges pollutants to waters of the United States, it is subject to the prohibition of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and the requirements of Section 402 of the Act, 33 U.S.C. § 1342.

GENERAL ALLEGATIONS

22. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the EPA has authorized the NJDEP to administer the federal NPDES program in New Jersey. The NJDEP is the authorized permitting authority for the State of New Jersey.
23. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA has authority to take action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

PVSC's 2005 Individual New Jersey Pollutant Discharge Elimination System ("NPDES") Permit

24. On January 6, 2005, the NJDEP issued New Jersey Pollutant Discharge Elimination System ("NPDES") Permit No. NJ0021016 ("2005 Individual Permit") to PVSC. The Individual Permit would have expired on February 28, 2010, but the NJDEP administratively extended its effectiveness, pursuant to 40 C.F.R. § 122.6, until its authorization was incorporated into a new

individual permit, under the same permit number, effective July 1, 2015, with an expiration date of June 30, 2020.

25. The 2005 Individual Permit authorizes PVSC to discharge treated effluent from its WWTP through outfalls 001 and 002 to the Upper New York Bay and Newark Bay, respectively, in compliance with the limitations and conditions specified in that permit.
26. The 2005 Individual Permit, Part III., authorizes PVSC to convey and treat, on an annual average basis, up to 330 MGD of wastewater flows.
27. The 2005 Individual Permit authorizes PVSC to discharge treated wastewater from outfall 001 to Upper New York Bay, until the hydraulic capacity of outfall 001 is maximized.
28. The 2005 Individual Permit authorizes PVSC to discharge treated wastewater from outfall 002 to Newark Bay, once the hydraulic capacity of outfall 001 is maximized.
29. The 2005 Individual Permit, Part IV.H.1 requires PVSC to operate the WWTP to “treat all wet weather flows and ... not exceed the [treatment] capacity of the [WWTP].”
30. The 2005 Individual Permit, Part II.B.6.a, pursuant to N.J.A.C. 7:10A-1.1, *et seq.*, requires PVSC to: (i) have readily available written operations and maintenance procedures that include, at a minimum, standard operating procedures for each major treatment unit and process; (ii) provide training programs for PVSC operators; and (iii) have a plan for monitoring process controls.
31. The 2005 Individual Permit, Part II.B.6.a, pursuant to N.J.A.C. 7:10A-1.1, *et seq.*, requires PVSC to update written operations and maintenance procedures within 30 days after any substantial change to the system that warrants a change to operation and maintenance of the system.
32. The 2005 Individual Permit, Part I.A.1., pursuant to N.J.A.C. 7:14A-6.12, requires PVSC to amend the operations and maintenance manual whenever there is a change in the treatment works design, construction, operations or maintenance that substantially changes the treatment works procedures.

PVSC's CSS General NJPDES Permit

33. On January 27, 1995, PVSC obtained coverage under the NJPDES Combined Sewer System General Permit, No. NJ0105023 (“CSS General Permit”). The NJDEP reissued the CSS General Permit on February 28, 2000, and again on June 30, 2004. Although that permit expired on July 31, 2009, the NJDEP administratively extended coverage for those municipalities that had filed a timely application for renewal pursuant to 40 C.F.R. § 122.6, which includes PVSC. Effective July 1, 2015, the NJDEP administratively revoked PVSC's coverage under the CSS General Permit, and replaced it with a new individual permit, as further described below.
34. The CSS General Permit, Part I.C.6., required PVSC to operate and maintain its facilities to maximize the conveyance of wastewater to the WWTP for treatment and to minimize the frequency and duration of combined sewer overflows (“CSOs”) (direct discharges of untreated wastewater to receiving waters) from outfalls in the combined sewer systems tributary to the WWTP.

35. The CSS General Permit, Part I.C.2., subpart b., prohibited dry weather overflows from CSS outfalls, as one of nine minimum controls.
36. The CSS General Permit, Part I.C.5., required PVSC to develop, maintain as current, and implement a proper operation and maintenance program that will maintain all treatment works, facilities and control systems in good working order and effective operation.
37. The CSS General Permit, Part I.C.3., required PVSC to prevent the intrusion of the receiving waters into the collection system past the combined sewer overflow control facilities, as part of its proper operation and maintenance of the WWTP.

PVSC's 2015 Individual Permit

38. Effective July 1, 2015, the NJDEP renewed PVSC's Individual Permit No. NJ0021016 ("2015 Individual Permit"); carried over, among others, the above-cited conditions of PVSC's 2005 Individual Permit and CSS General Permit into the new individual permit; and revoked PVSC's coverage under the CSS General Permit. The 2015 Individual Permit expires on June 30, 2020.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

39. On December 9 through December 12, 2008, March 31 through April 2, 2009, and August 4, 2010, an inspection team composed of staff from EPA Headquarters, EPA Region 2, the NJDEP and the EPA contractor PG Environmental, LLC, conducted a series of compliance evaluation inspections of the PVSC combined sewer collection and conveyance system and wastewater treatment plant. Based on these inspections and subsequent discussions and data review, the EPA alleges the following violations of the Permits:

- a) PVSC failed to maximize wastewater flow to the WWTP and maximize WWTP treatment capacity, in violation of Part IV., H.1 of the 2005 Individual Permit and Part I.C.6. of the CSS General Permit, including:

1. On numerous occasions, including, but not limited to, 15 days in 2008, PVSC closed the sluice gates on the Main Interceptor in Newark when the flow rate of wastewater to the WWTP was below the maximum treatment capacity of the WWTP, causing the discharge, without treatment, of wastewater through one or more CSO discharge points in Newark to the Passaic River; and

2. On numerous occasions, including, but not limited to, 13 days in 2008, PVSC partially closed the sluice gate on the South Side Interceptor in Newark when the flow rate of wastewater to the WWTP was below the maximum treatment capacity of the WWTP, causing the discharge of wastewater through one or more CSO discharge points in Newark to Newark Bay.

- b) PVSC failed to properly operate and maintain the WWTP and PVSC collection system to maximize treatment of wastewater and minimize the frequency and duration of discharges of untreated wastewater to receiving waters, in violation of Part II.B.6.a, pursuant to N.J.A.C. 7:10A-1.1, *et seq.*, of the 2005 Individual Permit and Part I.C.5 of the CSS General Permit, including:

1. At the time of the December 2008 inspection, PVSC representatives provided written Standard Operating Procedures (SOPs) governing the modification of PVSC operations during wet weather events, entitled "Primary Clarifier Inclement Weather Usage," dated June 13, 2008. These SOPs describe how primary clarifiers are supposed to be used in concert with increasing WWTP influent flows. Based on the EPA's review of 16 wet weather events between January 2008 and December 2008, on numerous occasions PVSC failed to maximize the use of additional primary clarifiers in accordance with its SOPs; and

2. At the time of the December 2008 inspection, PVSC representatives provided written SOPs governing the modification of PVSC operations during wet weather events, entitled "Guidelines for Collection System Flows," dated April 30, 2007. These SOPs state that operators should close the Newark sluice gates when flow to the WWTP reaches 425 million gallons per day (MGD). During at least 15 wet weather events in 2008, PVSC closed the sluice gates on the Main Interceptor and the South Side Interceptor in Newark when the flow of wastewater to the WWTP was less than 425 MGD, including 4 wet weather events where PVSC closed the sluice gates when the flow of wastewater to the WWTP was less than 350 MGD.

c) PVSC failed to prevent dry weather overflows from CSS outfalls, in violation of Part I.C.2., subpart b of the CSS General Permit, including:

1. On or about March 21, 2006, the sluice gate in the regulator on the Main Interceptor located at Freeman Street in Newark was closed. This sluice gate closure caused the discharge of sewage during dry weather through one or more CSO discharge points in Newark; and

2. On or about March 30, 2006, the sluice gate in the regulator on the Main Interceptor located at Jackson Street in Newark was closed. This sluice gate closure caused the discharge of sewage during dry weather through one or more CSO discharge points in Newark.

40. On April 5, 2011, the EPA transmitted the findings of its compliance inspection reports to PVSC. Subsequently, the EPA and PVSC had multiple technical meetings, including ones held on, but not limited to, November 17, 2011, September 10, 2012, April 11, 2013, June 3, 2013, and December 9, 2014, to investigate options for how PVSC would address the findings in the EPA's compliance inspection reports. PVSC voluntarily implemented a number of the requested actions and programs in response to these discussions. Beginning in late 2012, Hurricane Sandy significantly impacted the PVSC WWTP, resulting in delays in determining appropriate actions for implementation by PVSC. This Administrative Order on Consent seeks to formalize a series of measures (many of which are already underway in response to the Parties' earlier discussion) that PVSC will implement in response to the findings set forth in the EPA's compliance inspection reports.

41. Based on the above findings of fact and conclusions of law, the EPA alleges that Respondent violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and its Permits issued under Section 402 of the Clean Water Act, 33 U.S.C. § 1342, by failing to comply with several requirements of its 2005 Individual Permit, the CSS General Permit and its 2015 Individual Permit.

ORDERED PROVISIONS

In consideration of the above Findings, and pursuant to the provisions of Section 309(a) (3) of the Act, 33 U.S.C. § 1319(a) (3), the EPA has determined, and Respondent agrees, that compliance with the following requirements is reasonable.

IT IS HEREBY AGREED:

42. Immediately upon receipt of the original copies of this Order, a responsible official of PVSC shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Chief, Compliance Section, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope to the address listed below.

43. Maximizing Flow to the Waste Water Treatment Plant

Pursuant to PVSC's NPDES Permit No. NJ0021016, Part IV.F.4., PVSC shall operate and maintain the entire collection system owned/operated by PVSC that conveys flow to the treatment works to maximize the conveyance of waste water to the WWTP for treatment consistent with the collection system capacity and treatment plant capacity and NJPDES permit limitations.

44. New and Revised Standard Operating Procedures and WWTP Remedial Measures

In order to maximize the flow of wastewater to the WWTP for treatment, consistent with meeting permit limits as set forth in Paragraph 43 above, minimize CSOs in the hydraulically connected sewer system, and eliminate dry weather CSOs, as required by PVSC's NPDES Permit No. NJ0021016, PVSC shall continue to implement the following standard operating procedures ("SOPs"):

- a) Primary Tanks: "Primary Clarifier Auto Fill System Operating Procedure" (October 27, 2016);
- b) Sluice Gate Operation: "Wet Weather Flow Regulation Combined Sewer Overflow Regulator Gate Operating Procedure" (January 24, 2017); and
- c) Regulator Inspections: "Post-Rain Regulator Inspection Procedure" (July 10, 2017) and "Annual Combined Sewer Overflow (CSO) Regulator Chamber Inspection Procedures" (July 11, 2017).

These SOPs may be amended from time to time.

Going forward, PVSC shall provide to the EPA, for review and comment, any changes to these SOPs. However, this notice requirement shall not prevent PVSC from implementing operational steps necessary to (1) protect the WWTP during wet weather operations or (2) ensure compliance with effluent limitations during wet weather operations.

45. Evaluation of Bypassing During Wet Weather

If PVSC evaluates bypassing certain flows received by the WWTP during periods of wet weather, as an interim measure, pending the submittal, approval, and implementation of its Long Term

Control Plan ("LTCP"), to reduce combined sewer overflows, maximize the conveyance of wet weather flows to the WWTP, and maximize the treatment of wet weather flows at the WWTP, then PVSC shall demonstrate to the NJDEP that any such interim bypass complies with 33 U.S.C. § 1342(q)(1), 40 C.F.R. § 122.41(m), and NJAC 7:14A-11.12 Appendix C. II.C.7.

46. SOPs and WWTP Improvements for Interim Bypassing During Wet Weather

If PVSC evaluates bypassing certain flows received by the WWTP during periods of wet weather, as an interim measure, pending submittal, approval, and implementation of its LTCP, to reduce combined sewer overflows, maximize the conveyance of wet weather flows to the WWTP for treatment, and maximize the treatment of wet weather flows at the WWTP, then PVSC shall develop and submit SOPs for such an interim bypassing, including specific parameters to ensure that PVSC will comply with all applicable effluent limits at the WWTP outfalls, to the EPA for review and comment after consultation with NJDEP. PVSC shall also submit a description and schedule for completing any WWTP improvements necessary for the interim bypassing of flows during wet weather. The interim bypassing SOPs shall include, at a minimum:

- a) A calculation of the WWTP's maximum secondary treatment capacity;
- b) The conditions, including WWTP flow rates and other conditions, as applicable, under which effluent from the primary tanks will be mixed with effluent that has received full treatment before discharge from the WWTP outfalls;
- c) The thresholds and procedures for starting and stopping the interim bypass;
- d) The maximum amount of primary effluent that can be mixed with fully treated effluent while ensuring compliance with effluent limits at the WWTP outfalls;
- e) Procedures for monitoring during PVSC's use of interim bypasses during wet weather, consistent with the monitoring requirements of the 2015 Individual Permit and N.J.A.C. 7:14A-6.5; and
- f) Procedures for documenting and reporting PVSC's use of the interim bypass during wet weather to the EPA and the NJDEP.

47. Use of Interim Bypassing During Wet Weather

- a) If, after satisfying any comments from the EPA on the submissions in Paragraphs 45 and 46, above, PVSC wants to use bypasses during wet weather as an interim measure, pending submittal, approval, and implementation of its LTCP, then PVSC shall submit an administratively and technically complete application for a modification of its Individual Permit to NJDEP for permission to bypass during wet weather as an interim measure, including, at a minimum, the demonstration required by Paragraph 45, above. Subsequent to receipt of a draft permit modification from the NJDEP, and after conclusion of the 30-day public comment period, PVSC shall submit an administratively and technically complete Treatment Works Approval application.
- b) If the NJDEP grants PVSC's Treatment Works Approval application and its request to modify its Individual NJPDES Permit, PVSC shall implement any WWTP improvements

necessary for operating the interim bypass in accordance with the schedule set forth in PVSC's modified Individual NJPDES Permit. The Individual NJPDES Permit modification shall include a requirement for PVSC to monitor and report the following information to the NJDEP for DSN 002: chlorine residual, fecal coliform indicator, and estimated flow discharged.

- c) If the NJDEP grants PVSC's Treatment Works Approval application and its request to modify its Individual NJPDES Permit, PVSC shall implement the SOPs for interim bypassing during wet weather, approved under Paragraph 46, in accordance with all applicable permit conditions and the schedule set forth in PVSC's modified Individual NJPDES Permit.
- d) If the NJDEP grants PVSC's Treatment Works Approval application and its request to modify its Individual NJPDES Permit, then, prior to the expiration of its modified Individual NJPDES Permit, if PVSC intends to continue to use bypassing during wet weather as part of selected LTCP CSO control measures, it shall reevaluate the bypass and demonstrate to the NJDEP its continued compliance with 33 U.S.C. § 1342(q)(1), 40 C.F.R. § 122.41(m), NJAC 7:14A-11.12 Appendix C. II.C.7, and PVSC's NPDES Permit No. NJ0021016, Part IV.G.4.e.vii, as part of the LTCP.

48. Evaluation of Peak Wet Weather Flows in the Hydraulically Connected Sewer System

By June 1, 2018, PVSC shall submit to EPA available flow metering information addressing the measured dry weather flows and peak wet weather flows into its interceptor system from each PVSC permanent meter location that measures separate and combined sewer systems that contribute flow to the WWTP. PVSC shall include with this information an explanation about how the data for each community are derived as well as any known limitations on the data. PVSC shall provide EPA with an annual update in the next semi-annual or annual report required under Paragraph 50, following the availability of this information.

49. Public Notification

The parties acknowledge that PVSC has voluntarily, and at its own cost, established a website that serves as a platform to provide CSO public notification statewide. In addition, PVSC, also at its own cost, has installed CSO warning signs at all outfalls within the PVSC service area. See <http://njcso.hdrgateway.com/>. The public notification and signage requirements are legal obligations of the localities, and not PVSC. PVSC hereby agrees to facilitate the transfer of the maintenance of (1) the CSO website and (2) regional CSO signs to the localities.

50. Semi-Annual Reports

PVSC shall submit semi-annual reports to the EPA documenting compliance with these Ordered provisions. The first such report shall be submitted to the EPA on January 31, 2019 (covering July 1 through December 31, 2018), and shall be submitted every August 1 and January 31 thereafter until the items required by this order have been completed.

GENERAL PROVISIONS

51. For the purposes of this Order only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the EPA's specific factual allegations or legal conclusions contained herein.
52. Respondent waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision, set forth in this Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
53. Upon the Effective Date, this Order applies to, and is binding upon, Respondent and its officers, directors, agents, successors and assigns. Any change in ownership or corporate organization, structure, or status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order, unless the EPA, Respondent and the transferee agree in writing to allow the transferee to assume such responsibilities. Respondent shall notify the EPA, at the address specified below, thirty (30) days prior to any proposed transfer of responsibilities.
54. This Order does not constitute a waiver from compliance with, or a modification of the effective terms and conditions of, the CWA, and its implementing regulations which remain in full force and effect. This Order is an enforcement action taken by the EPA to ensure swift compliance with the CWA. Issuance of an Administrative Order on Consent shall not be deemed an election by the EPA to forego any civil or criminal actions which would seek penalties, fines, or other appropriate relief under the CWA.
55. Any questions concerning this Order should be directed to Mr. Larry Gaugler, P.E., Environmental Engineer, at (212) 637-3950.
56. All information or documents required to be submitted by Respondent as part of this Order shall be sent by certified mail or its equivalent to the following addresses:

Doughlas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866

Rich Paull, Director
Division of Water and Land Use Enforcement
Compliance and Enforcement
New Jersey Department of Environmental Protection
Mail Code 401-04B
401 East State Street, PO Box 420
Trenton, NJ 08625-0420

The EPA recommends the utilization of electronic transmission means. Therefore, as an alternative to the above, such information or documents may be submitted electronically. Electronic submissions must include the Respondent's certification, specified below.

Pursuant to 40 C.F.R. § 122.22, all information or documents required to be submitted by Respondent shall be signed by an authorized representative of Respondent, and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

57. All information or documents directed to PVSC as part of this order shall be sent by email and by regular mail to the following addresses:

Executive Director
Passaic Valley Sewerage Commission
600 Wilson Avenue
Newark, NJ 07105

and

Office of General Counsel
Passaic Valley Sewerage Commission
600 Wilson Avenue
Newark, NJ 07105

EFFECTIVE DATE

This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

FOR: PASSAIC VALLEY SEWERAGE COMMISSION

Dated: 4/12/18


Signed: _____


Gregory A. Tramontozzi, Esq., Executive Director
Passaic Valley Sewerage Commission

Attest:

Dated: 4/12/2018

Signed: _____


Joseph F. Kelley, Clerk
Passaic Valley Sewerage Commission

FOR: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Dated: APR 16 2018

Signed: _____



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Exhibit 4

4-States Meeting Blending
Announcement Request –
EPA-HQ-2018-008212

HALL & ASSOCIATES

1620 I Street, NW
Suite 701
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207
Reply to E-mail: ethomas@hall-associates.com

May 31, 2018

Via FOIA Online

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: FOIA Request for Records and Correspondence Related to EPA's 2013 4-States Meeting

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2.

Background

On November 13, 2013, EPA personnel from Region VII and Headquarters attended the annual EPA Region VII "4-States" Governmental Affairs Meeting. At the "4-States" meeting, Mr. S. Neugeboren informed the regulated community and state permitting agencies present of the Agency's conclusions regarding the precedential scope of the *Iowa League of Cities v. EPA*, 711 F.3d 844 (8th Cir. 2013) ("*ILOC*"), ruling. The content of the Agency's statements at the "4 States" meeting regarding the applicability of the *ILOC* decision to future NPDES permitting decisions was reported in NWEA's *EffluentLine* newsletter.

Request

This request seeks:

- 1) All records and correspondence concerning the November 2013 4-States Meeting transmitted between EPA HQ and EPA Region 7. Please limit the search to records and correspondence created on or after January 1, 2013.
- 2) All records at EPA HQ addressing, in any way, EPA HQ personnel attendance at the meeting, including travel authorization records.

HALL & ASSOCIATES

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$100.00. Please duplicate the records that are responsive to this request and send it to the undersigned at the above address. If the requested record is withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary documents are duplicated.

Respectfully,

//s// Erin Thomas

Erin Thomas

Exhibit 5

2013 *ILOC* Implementation

Request –

EPA-HQ-2014-000552

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207

Reply to E-mail:
jhall@hall-associates.com

October 25, 2013

VIA ONLINE FOIA SYSTEM

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with Iowa League of Cities v. EPA decision

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, and e-mail messages sent by EPA personnel from EPA accounts and any private accounts regarding EPA matters.

On March 25, 2013, the Court of Appeals for the Eighth Circuit issued a decision in the *Iowa League of Cities v. EPA*, 711 F.3d 844 (8th Cir. 2013) vacating the mixing zone rule contained in the June 2011 letter and the blending rule contained in the September 2011 letter. The court held that the bacteria mixing zone prohibition in primary contact recreation waters "eviscerate[d] state discretion" to utilize such mixing zones and, therefore, constituted a revised rule that did not go through proper rulemaking procedures. *Id.* at 874. Additionally, the court found EPA's blending prohibition was both procedurally and substantively improper as it was "irreconcilable with both the secondary treatment rule and the bypass rule" (*id.* at 875) and "exceeds EPA's statutory authority" under the CWA. *Id.* at 877.

This request seeks any records containing the following:

1. Any communication between EPA Headquarters and EPA Regional offices discussing the impact of the *Iowa League of Cities* decision on permitting and enforcement actions;

2. Any communication between EPA Regional offices and state entities discussing whether the *Iowa League of Cities* decision should be or should not be followed in future regulatory actions; and,
3. Any EPA legal or regulatory analysis regarding the effect of the *Iowa League of Cities* decision including whether the decision will be followed by all EPA Regions nationwide.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsive to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. If the Agency lacks records responsible to a particular item, please note that in the response.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ John C. Hall

JOHN C. HALL

Exhibit 6

EPA Response to 2013 *ILOC* Implementation Request



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 24 2013

OFFICE OF
WATER

Mr. John Hall
Hall & Associates
1101 15th Street, NW, Suite 203
Washington, D.C. 20005-5004

Re: Freedom of Information Act Request EPA-HQ-2014-000552

Dear Mr. Hall:

This is an interim, partial response to your Freedom of Information Act request of October 25, 2013. On December 2, 2013, you modified your request to provide only the following records:

1. Any legal or regulatory analysis or briefing materials prepared in support of the agency's decision to only apply the *Iowa League of Cities* decision in the 8th Circuit;
2. Any notifications given to the Regional offices from EPA Headquarters regarding the agency's aforementioned decision to only apply the *Iowa League of Cities* decision in the 8th Circuit; and
3. Any documents explaining how peak flow processing (also known as "blending") and bacteria mixing zones for CSO and stormwater discharges will be addressed in permitting and enforcement actions within the 8th Circuit versus outside of the 8th Circuit.

On December 11, 2013, you further clarified that you limited the request to documents residing at or prepared by EPA Headquarters or used by EPA Headquarters to render its decision. In response, I am enclosing the following documents which are responsive to your request:

1. Slide from powerpoint presentation "NPDES Litigation Update", dated July 2013
2. Speaker notes for presentation "NPDES Litigation Update," dated July 2013.
3. Email from Kevin Weiss to Richard Witt, subject "FW: Region 7: WEF / 4 States Meeting Agenda," dated October 28, 2013.

4. Email from Kevin Weiss to Glenn Curtis, subject "Desk statement for adverse decision in a Clean Water Act case," dated March 27, 2013.
5. Desk Statement on Iowa League of Cities CWA decision, dated March 26, 2013.
6. Email from Kevin Weiss to Glenn Curtis, subject "BioAcicq," dated April 4, 2013.

We are unable to provide the following documents which have been determined to be exempt from mandatory disclosure by either the deliberative process privilege of 5 U.S.C. 552(b)(5) as pre-decisional, deliberative, and confidential or the under the investigatory records compiled for law enforcement purposes privilege of 5 U.S.C. 552(b)(7).

1. Working draft of paper entitled "How Should EPA Interpret the *Iowa League* decision?" This is an undated draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
2. Working draft of paper entitled "Issue: Should EPA recommend that DoJ petition the Supreme Court for writ of certiorari to overturn the Eighth Circuit's decision in *Iowa League of Cities*?" dated August 10, 2013. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
3. Working draft of paper entitled "Iowa League of Cities v. EPA," undated. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
4. Working draft of paper entitled "Options for interpreting the *Iowa League* decision within the Eighth Circuit," undated. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
5. Working draft of paper entitled "Options for clarifying the Impact of Iowa League of Cities," dated October 30, 2013. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.

6. Working draft of paper entitled "Scope of the Iowa League of Cities Decision", dated July 19, 2013. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
7. Working draft memorandum, From Andrew Sawyers to Regional Water Permits Division Directions, Regions 1-10, subject "Applicability of *Iowa League* decision to EPA permitting determinations," dated November 5, 2013. This is a draft document prepared by Headquarters employees. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
8. Working draft memorandum "EPA's regulatory approach following the 8th Circuit's *Iowa League of Cities decision*" dated September 17, 2013. This is a draft document prepared by Headquarters employees. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
9. Working draft of paper "Potential Response to Iowa League," undated. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
10. Memorandum from Alexis P. Anderson, legal intern to Joanna Citron Day, RE: *Iowa League of Cities v. EPA*, dated November 21, 2013. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
11. Working draft of paper entitled "How Should We Answer the Actiflo Question?" This is an undated draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
12. Working draft of paper entitled "Option 1", dated September 9, 2013. This is a draft document prepared by Headquarters employees discussing a potential option. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
13. Working draft of paper entitled "Option 2" dated September 9, 2013. This is a draft document prepared by Headquarters employees discussing a potential option. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.

14. Working draft of paper entitled “Options for Interpreting Iowa League of Cities decision,” undated. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
15. Email from Joanna Day to James Vinch, subject “memo from my legal intern”, dated November 25, 2013. This is an email chain involving EPA Headquarters employees discussing options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
16. Email from Carol DeMarco to Joseph Theis, subject “PVSC and blending (PLEASE READ)”, dated November 20, 2013. This is an email chain involving EPA Headquarters employees discussing litigation specific matters. This document is withheld under the investigatory records compiled for law enforcement purposes privilege of 5 U.S.C. 552(B)(7) and the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
17. Email from Loren Denton to James Vinch, subject “Enforcement Cases Affected by Iowa League”, dated October 30, 2013. This is an email chain involving EPA Headquarters employees discussing litigation specific matters. This document is withheld under the investigatory records compiled for law enforcement purposes privilege of 5 U.S.C. 552(B)(7) and the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
18. Email from Leslie Allen to Alan Morrissey, subject “various Gary/Region 5 memos” dated October 30, 2013. This is an email chain involving Department of Justice and EPA Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
19. Email from Loren Denton to James Vinch, subject “Decision 711_F_3d_844.rtf; Iowa League of Cities Briefing 9-26-13 v4.docx” dated September 26, 2013. This is an email chain involving EPA Headquarters employees discussing options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
20. Email from Kevin Weiss to James Vinch, subject “Revised Q&A”, dated September 26, 2013. This is an email chain involving EPA Headquarters employees discussing options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.

21. Email from Kevin Weiss to James Vinch, subject "Follow up on Iowa League of Cities discussion", dated August 28, 2013. This is an email chain involving EPA Headquarters employees discussing options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.

We continue to search and review materials to determine which materials may be released and which will be withheld. You do not need to appeal EPA's decision to withhold documents at this time. You will receive administrative appeal rights at the time you receive the completed response and may appeal all of the withholdings at that time.

The cost of responding to the FOIA to date is \$1,015.75. An itemized invoice covering the charges for processing your request to date is enclosed. Please forward your check or money order, made payable to the U.S. Environmental Protection Agency, within 30 days of the date of this response. Your check should refer to the FOIA number above and should be accompanied by the top portion of the enclosed Bill for Collection. Your prompt payment of the amount indicated will be appreciated. If we determine that there will be additional costs for responding to the FOIA, we will request a written assurance of payment for the additional amount.

Again, this is an interim, partial response to your request. At this time, the EPA estimates the Agency will be able to complete this response, along with a description of your appeal rights, by January 31, 2014. Please contact me at (202) 564-1185 if you have any questions regarding our response.

Sincerely,



Deborah G. Nagle, Director
Water Permits Division

Enclosures

Exhibit 7

EPA Response to Nov. 20, 2013 NJ Blending Clarification Request



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SEP 20 2018

Erin Thomas
Hall & Associates
1620 I Street NW, Suite 701
Washington, DC 20006

Re: Freedom of Information Act Request No. EPA-HQ-2018-010345, Final Response

Dear Ms. Thomas:

This letter is in reference to your Freedom of Information Act (FOIA) request received by the U.S. Environmental Protection Agency (EPA or Agency) on August 7, 2018, in which you requested an unredacted copy of a November 20, 2013 email that was attached to the request.

The Office of Civil Enforcement has concluded its search for records responsive to your request. The records you requested are being withheld pursuant to 5 U.S.C. § 552(b)(5), the Deliberative Process Privilege, the Attorney Client Privilege, the Attorney Work Product Privilege. The records are exempt from disclosure because they are pre-decisional and deliberative and would harm agency decision making if released, contain confidential communications between an agency attorney and client concerning legal advice, and are documents prepared by, or at the direction of, an attorney in contemplation of litigation. The cost to process your request was \$140. Please see the attached invoice for billing and payment instructions.

This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals *received* after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution

services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (301) 837-1996 or (877) 684-6448; or fax, (301) 837-0348.

If you have any questions concerning this response please contact Dane Wilson of my staff at 202-564-0544.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark Pollins', with a stylized flourish at the end.

Mark Pollins
Direct, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance
Assurance

Exhibit 8

Nov. 20, 2013 NJ Blending
Clarification Request Appeal

HALL & ASSOCIATES

1620 I Street, NW
Suite 701
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207
Email: ethomas@hall-associates.com

October 24, 2018

Via FOIA Online

National Freedom of Information Officer
hq.foia@epa.gov
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: Appeal of FOIA EPA-HQ-2018-010345

To Whom This May Concern:

The letter constitutes an appeal of EPA's failure to provide responsive documents to FOIA request EPA-HQ-2018-010345, submitted by Hall & Associates ("H&A"). The basis of this appeal is discussed below.

In response to an October 25, 2013 FOIA request (EPA-HQ-2014-000552) (Attachment 1) submitted by H&A, EPA provided a partially-redacted November 20, 2013 EPA email Re: PVSC and blending (PLEASE READ) (Attachment 2). In the partially-redacted November 20, 2013 email, USEPA Attorney-Advisor Carol Lynn DeMarco in EPA's Water Enforcement Division communicated with other EPA Water Enforcement Division staff discussing how EPA intended to implement the 8th Circuit's *Iowa League of Cities* decision for a New Jersey NPDES discharger (Passaic Valley Sewerage Commission or PVSC). The redactions were claimed under the deliberative process privilege.

On August 7, 2018, H&A submitted FOIA request EPA-HQ-2018-010345 (Attachment 3) seeking:

In light of the recent D.C. District Court decision [May 22, 2018 decision in the D.C. District Court case *Hall & Associates v. EPA* (15-cv-1055)], this Request seeks the attached [November 20, 2013] email in full. The D.C. District Court found that EPA rendered a non-acquiescence decision, at the latest, on November 19, 2013 and therefore, as this document does not predate November 19, 2013, it may not be classified as pre-decisional or deliberative and must be released in full.

On September 20, 2018, H&A was informed EPA would not release the record, claiming *inter alia*, the document was pre-decisional and attorney-client privileged. Such statements are

HALL & ASSOCIATES

objectively false in light of Judge Jackson's decision in *H&A v. EPA*. Moreover, this was an interchange among EPA Office of Enforcement and Compliance Assurance ("OECA") staff, there was no pending or threatened enforcement action against PVSC for blending (as such operations did not exist at this facility), and the matter under discussion was not sought to seek advice of counsel on the legality of blending (which had already been decided by EPA and announced publicly the week before). Contemporaneous OECA records confirm that a decision had already been rendered to classify blending as an illegal bypass in all matters outside the 8th Circuit. In short, EPA's actions in refusing to release this record are based on complete fabrications intended to thwart public access to this record. EPA's assertion that it took five hours of review time to determine that this single record is pre-decisional and attorney-client privileged is abusive and thoroughly unreasonable. Seeking a \$140 payment for the non-release of a single record is a fraudulent payment request intended to obtain payments for services that were not rendered. Any competent review could have assessed the ability to release this document in a matter of minutes, not hours. The payment demand should be immediately revoked.

Pursuant to 40 C.F.R. § 2.104(j), H&A hereby appeals EPA's failure to process H&A's FOIA Request EPA-HQ-2018-010345. Specifically, H&A appeals as arbitrary and capricious EPA's failure to release the requested record which, as explained in the FOIA request, cannot be pre-decisional or deliberative or attorney-client. Moreover, the payment demand should be revoked.

Based on the forgoing, EPA must release the November 20, 2013 email in full. If EPA does not, H&A will have no other recourse but to pursue such relief in federal court.

Respectfully,

//s// Erin Thomas

Erin Thomas

Exhibit 9

EPA Appeal Determination to
Nov. 20, 2013 NJ Blending
Clarification Request



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

November 30, 2018

Erin Thomas
Hall & Associates
1620 I Street, NW, Suite 701
Washington, DC 20006-4033

Re: Freedom of Information Act Appeal No. EPA-HQ-2019-000789 (Request No. EPA-HQ-2018-010345)

Dear Ms. Thomas:

I am responding to your Freedom of Information Act (FOIA) appeal, dated October 24, 2018. You appealed the September 20, 2018 decision (decision) of Mark Pollins, Director of the Water Enforcement Division, Office of Enforcement and Compliance Assurance of the U.S. Environmental Protection Agency (EPA or Agency), which denied the FOIA request you submitted to EPA on August 7, 2018.

Your request sought an unredacted copy of the November 20, 2013 redacted email from Ms. DeMarco, entitled, "PVSC and blending (PLEASE READ)." The decision stated that your request was denied because the documents were exempt from disclosure under Exemption 5's deliberative process, attorney client, and attorney work product privileges of the FOIA, 5 U.S.C. § 552(b)(5).

I have carefully considered the withheld information, your FOIA request, EPA's decision, and your appeal. For the reasons set forth below, I have determined that your appeal should be, and is, denied.

Exemption 5

Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The portion of the November 20, 2013 email that was withheld under Exemption 5 of the FOIA is exempt from disclosure because it is inter-agency or intra-agency memoranda or letters generated by EPA employees and because the documents contain information that is protected by the attorney work-product privilege.

Attorney work-product privilege

Exemption 5 of the FOIA protects from disclosure a record, or portion of a record, that is subject to the attorney work-product privilege. The attorney work-product privilege protects documents prepared by, or at the direction of, an attorney in anticipation of

litigation or during litigation. The withheld portion of the November 20, 2013 email was prepared by an EPA attorney in anticipation of litigation related to the ongoing Clean Water Act enforcement action against the Passaic Valley Sewerage Commission. Release of this material would allow scrutiny of EPA's sensitive litigation preparations. Therefore, I have determined that the withheld material is exempt from disclosure under Exemption 5 of the FOIA.

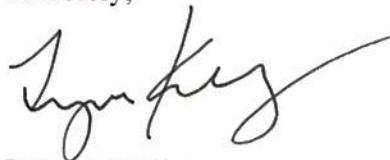
Reasonably segregable information

I have determined that the withheld portion of the November 20, 2013 email contains no reasonably segregable information that may be released.

This letter constitutes EPA's final determination on this matter. Pursuant to 5 U.S.C. § 552(a)(4)(B), you may obtain judicial review of this determination by filing a complaint in the United States District Court for the district in which you reside or have your principal place of business, or the district in which the records are situated, or in the District of Columbia. Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) within the National Archives and Records Administration was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD, 20740-6001; e-mail, ogis@nara.gov; telephone, 202-741-5770 or 1-877-684-6448; and fax, 202-741-5769.

Should you have any questions concerning this matter, please call Quoc Nguyen at 202-564-6343.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn E. Kelly", with a long, sweeping horizontal line extending to the right.

Lynn E. Kelly
Assistant General Counsel
General Law Office

Exhibit 10

EPA Interim Response to 2018 Blending Rulemaking Request



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

OCT 19 2018

Ms. Erin Thomas
Hall & Associates
1620 I Street, N.W. – Suite 701
Washington, DC 20006-4033

Re: Freedom of Information Request No. EPA-HQ-2018-010997 – Interim Release

Dear Ms. Thomas:

This letter is in response to your above referenced Freedom of Information Act (FOIA) request received by the U.S. Environmental Protection Agency (EPA or Agency) on August 28, 2018, in which you requested:

1. Any documents prepared as part of the process for getting authorization to proceed with this proposed regulatory action [peak flows management rulemaking], including any agency or inter-agency authorizations to proceed with the regulatory clarification activities announced by EPA on this topic.
2. Any documents, including any notices to OMB, or related background documents that describe the basis and background for why the Agency decided to undertake this regulatory action.
3. Any documents that describe the form or nature of the action being considered (*i.e.*, is this a possible regulatory or deregulatory action).
4. Any documents prepared as part of or in conjunction with this Agency action that identifies or discusses the rule being considered for modification/clarification to allow blending to occur.

Per your October 9, 2018 email, the records EPA is releasing include background documents generated as part of the Agency's process in initiating the peak flows management rulemaking. Portions of or the entirety of certain documents have been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. § 552(b). Where material has been withheld, the basis (exemption) for withholding is provided.

The cost of providing the current set of responsive documents is \$220.00. Your October 9, 2018 email also indicated that you would determine whether or not you would like us to complete the records search for responsive email documents related to this FOIA request. Please let us know within 10 calendar days (by October 29, 2018) whether you would like us to complete this records search and also provide an assurance of payment for the \$1,388.00 to complete the processing of this request. Upon receiving this request, we will contact you to discuss the timeline for providing these records. If we do not receive a reply within 10 calendar days (by October 29, 2018), we will consider this FOIA request closed and provide you with an itemized invoice covering the charges for processing this request to date.

Again, your request is not being closed at this time. When your request is closed, you will receive information concerning your appeal rights for any part of EPA's response. If you have any questions about this interim production or your request generally, please contact Chris Kloss at kloss.christopher@epa.gov or by phone at (202) 564-1438. Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or call (202) 566-1667. Lastly, you may also seek assistance from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8610 Adelphi Road, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Sincerely,

A handwritten signature in black ink, appearing to read "Sally" followed by a stylized monogram or initials.

Sally Gutierrez, Acting Director
Water Permits Division

Attachment

Enclosure A
Responsive Records for FOIA EPA-HQ-2018-010997
Interim Release
October 19, 2018

Released Documents

1. Draft document entitled *Bypass and Blending: Wet Weather Impacts at Treatment Plants* dated May 2017. Portions of this document are withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
2. Draft document entitled *Bypass and Blending: Wet Weather Impacts at Treatment Plants* dated October 2017. Portions of this document are withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
3. Draft document entitled *Bypass and Blending: Wet Weather Impacts at Treatment Plants* dated November 2017. Portions of this document are withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
4. Draft document entitled *Bypass and Blending: Wet Weather Impacts at Treatment Plants* dated February 2018. Portions of this document are withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
5. Draft document entitled *Appendix: Bypass and Blending Wet Weather Impacts at Treatment Plants* dated April 2018. Portions of this document are withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.

Withheld Documents

6. Draft document entitled *Options: Addressing wet weather blending and application of the bypass regulations* dated November 15, 2017. This document is withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
7. Draft document entitled *Options: Addressing wet weather blending and application of the bypass regulations* dated November 16, 2017. This document is withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
8. Draft document entitled *Blending Resource Request* dated January 3, 2018. This document is withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
9. Draft document entitled *Reg Agenda Entry: Updates to Wet Weather Treatment Regulations for POTW Treatment Plants* dated February 19, 2018. This document is withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
10. Draft document entitled *Recommended Path for Blending Rulemaking* dated February 28, 2018. This document is withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.

11. Draft document entitled *Topic: Blending at Publicly Owned Treatment Works (POTW) Treatment Plants* dated March 1, 2018. This document is withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
12. Draft document entitled *EPA Unified Agenda OMB Passback – Blending OWM* dated March 13, 2018. This document is withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
13. Draft document entitled *Proposed Rulemaking Schedule* dated April 9, 2018. This document is withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
14. Draft document entitled *Regulatory Plan: Blending at Publicly Owned Treatment Works* dated April 10, 2018. This document is withheld under the deliberative process of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.

Exhibit 11

2018 Blending Rulemaking Request Appeal

HALL & ASSOCIATES

1620 I Street, NW
Suite 701
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207
Email: ethomas@hall-associates.com

November 1, 2018

Via FOIA Online

National Freedom of Information Officer
hq.foia@epa.gov
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: Appeal of FOIA EPA-HQ-2018-010997

To Whom This May Concern:

This letter constitutes an appeal of EPA's failure to provide responsive documents to FOIA request EPA-HQ-2018-010997, submitted by Hall & Associates ("H&A"). The basis of this appeal is discussed below.

On August 28, 2018, H&A submitted FOIA request EPA-HQ-2018-010997 (Attachment 1) seeking:

1. Any documents prepared as part of the process for getting authorization to proceed with this proposed regulatory action [peak flows management rulemaking], including any agency or interagency authorizations to proceed with the regulatory clarification activities announced by EPA on this topic.
2. Any documents, including any notices to OMB, or related background documents that describe the basis and background for why the Agency decided to undertake this regulatory action.
3. Any documents that describe the form or nature of the action being considered (i.e., is this a possible regulatory or deregulatory action).
4. Any documents prepared as part of or in conjunction with this Agency action that identifies or discusses the rule being considered for modification/clarification to allow blending to occur.

In an October 19, 2018 interim response, EPA provided five mostly identical sets of partially-redacted *Bypass and Blending: Wet Weather Impacts at Treatment Plants* PowerPoint slides and assessed a resulting fee of \$220.00. EPA claimed the redactions were deliberative process

HALL & ASSOCIATES

privileged (5 U.S.C. § 552(b)(5)) and were therefore withheld. EPA also fully withheld nine records citing the same justification. The interim response offers to complete the processing of this request for an assurance of payment of an additional \$1388.00. Based on further correspondence with EPA, this additional fee would be required to search for and release responsive email records. H&A responded that no emails are sought in this request.

Pursuant to 40 C.F.R. § 2.104(j), H&A hereby appeals EPA's failure to properly process H&A's FOIA Request EPA-HQ-2018-010997. Specifically, H&A appeals as arbitrary and capricious 1) EPA's withholding of portions of or entire responsive documents citing to 5 U.S.C. § 552(b), 2) EPA's inadequate search for records, and 3) the excessive assessed fees to obtain the responsive records under FOIA.

EPA's failure to fully release the requested records cannot be pre-decisional or deliberative as they directly pertain to a final Agency decision (*see* D.C. District Court's May 22, 2018 decision in *Hall & Associates v. EPA*, Civil Action No. 15-cv-01055 (D.D.C.) that determined that the November 19, 2013 Desk Statement issued by EPA constituted "working law" and a final Agency decision). All of the partially-redacted and fully withheld records are dated after November 19, 2013, the date of the final Agency decision and therefore cannot be pre-decisional and must be released in full.

In addition, EPA's search was clearly inadequate as the sought records were clearly and specifically described and EPA at no time requested clarification aside from H&A limiting the initial scope by specifying the temporary deferral of the email records sought. Yet, the records released in the interim response contained five sets of PowerPoint slides that were identical aside from the date. It is unreasonable and an abuse of FOIA for EPA to claim that these five versions of the same PowerPoint served as the basis for the proposed Peak Flows Management Rulemaking and internal regulatory clearances as well as permission from OMB to proceed. Moreover, the fees assessed are grossly excessive in charging \$220.00 for essentially a single PowerPoint slideshow. Likewise, EPA's assertion that it would cost an additional \$1388 to produce EPA's emails associated with this request was a grossly inappropriate cost unrelated to the actual search and review time. As is evident by actions EPA has already taken, the Agency has no intention of releasing any of these records under claims of attorney-client or deliberative process privilege. Therefore, it could not possibly take EPA even five hours of complete review and collection time to identify the records sought and issue its withholding decision.

HALL & ASSOCIATES

Based on the forgoing, EPA must 1) release, in full, the partially-redacted and withheld responsive records, 2) complete the processing of this FOIA, and 3) revise the assessed fees to reflect a reasonable level of effort and time. If EPA does not do so within 20 days, H&A will have no other recourse but to pursue such relief in federal court.

Respectfully,

//s// Erin Thomas

Erin Thomas

Exhibit 12

Blending Enforcement Orders
Request Email Correspondence

From: [Wilson, Dane](#)
To: ["Erin Thomas"](#)
Cc: [John Hall](#)
Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685
Date: Tuesday, September 11, 2018 2:41:00 PM

Good afternoon, Ms. Thomas.

Our office is working to get these to you as expeditiously as possible. Currently, I anticipate having these documents uploaded and available on FOIAonline as early as tomorrow afternoon.

Thank you,

Dane A. Wilson
Attorney - Advisor
U. S. Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South, Room 4116A
1200 Pennsylvania Avenue, NW
Mail Code: 2243A
Washington, DC 20460
(202) 564-0544
Wilson.Dane@epa.gov

From: Erin Thomas [mailto:ethomas@hall-associates.com]
Sent: Tuesday, September 11, 2018 2:27 PM
To: Wilson, Dane <Wilson.Dane@epa.gov>
Cc: John Hall <jhall@hall-associates.com>
Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Mr. Wilson,

I am following up on the letter sent to you on August 29, 2018. We have not received any response on how EPA intends on proceeding with this request after this clarification/assurance letter. Please let me know the status of this request.

Thank you,

Erin Thomas

From: John Hall
Sent: Wednesday, August 29, 2018 5:08 PM
To: Wilson, Dane <Wilson.Dane@epa.gov>; Erin Thomas <ethomas@hall-associates.com>
Cc: Erin Thomas <ethomas@hall-associates.com>

Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Dear Mr. Wilson,

In response to your email below, please find the attached letter. Please let us know how EPA intends on proceeding.

Regards,

John

John C. Hall
Hall & Associates
1620 I Street, NW, Suite 701
Washington, DC 20006
Phone: 202-463-1166
Fax: 202-463-4207
E-Mail: jhall@hall-associates.com

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From: Wilson, Dane <Wilson.Dane@epa.gov>
Sent: Wednesday, August 29, 2018 11:15 AM
To: Erin Thomas <ethomas@hall-associates.com>; John Hall <jhall@hall-associates.com>
Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Ms. Thomas,

To respond to your email, regarding FOIA Request EPA-HQ-2018-008685, I wanted to clarify my August 15, 2018 statements:

Concerning items #1 and #2, EPA Headquarters does not, as a general practice, become involved in issuing Clean Water Act administrative orders. However, we have conducted a search of civil judicial consent decrees and administrative orders, issued by EPA HQ or issued from a region and sent to EPA HQ.

To your second point, the PVSC order is in the possession of EPA Headquarters. The documents released only represent the first 100 documents that were marked as responsive. They do not represent all potentially responsive documents for this request, as stated in the August 15, 2018 email. There are more documents that the initial review has deemed responsive that were not yet released, as the fee cap has been exceeded and there has been no secondary review.

The current estimate to complete review of this FOIA requesting, including a secondary review of the remaining documents, is \$1,064. Until we receive written assurance of payment of that estimate, the deadline to respond continues to be tolled. Alternatively, if you do not wish to have us continue processing this FOIA, we can begin the close-out process.

Thank you,

Dane A. Wilson
Attorney - Advisor
U. S. Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South, Room 4116A
1200 Pennsylvania Avenue, NW
Mail Code: 2243A
Washington, DC 20460
(202) 564-0544
Wilson.Dane@epa.gov

From: Erin Thomas [<mailto:ethomas@hall-associates.com>]
Sent: Friday, August 24, 2018 2:35 PM
To: Wilson, Dane <Wilson.Dane@epa.gov>; John Hall <jhall@hall-associates.com>
Cc: Moore, Peter <Moore.Peter@epa.gov>
Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Mr. Wilson,

I have a few follow up points in response to your August 15, 2018 email regarding FOIA Request EPA-HQ-2018-008685:

1. The chapeau on items #1 and #2, as we discussed, limited the scope of the search to custodians at HQ but did not limit the search to enforcement orders “issued” by EPA Headquarters. The FOIA stated “any and all records **at** EPA HQ.” We interpret that phrase as including any records that are in the possession of EPA Headquarters, not only orders that were personally issued by Headquarters. We are aware that the HQ enforcement office often receives copies of final regional administrative orders, consent orders/agreements and certainly any final judicial orders/agreements.
2. We are aware that Headquarters has the PVSC order in its possession, as we know that the order was reviewed by EPA Headquarters prior to its completion. Due to the fact that Headquarters is in possession of and reviewed the PVSC order and it was not included as a responsive record to this request, does that indicate that the PVSC order does not address or restrict the ability of PVSC to utilize blending to process greater peak flows without providing secondary treatment of such flows (aka does not “classify blending as a bypass”)?

I hope that item one above clarifies the intended scope of the search requested and clears up any possible confusion. This should allow you to properly search for potential responsive records to items #1 and #2, which have always been the top priority in this request. We would like you to continue the processing of this request, but only starting with the clarified items #1 and #2 for enforcement orders in the possession of EPA Headquarters at this time. It is apparent that further clarification of item #3 is necessary to allow EPA to identify documents that it may issue. If you have any further questions please let me know.

Thank you,

Erin Thomas

From: Wilson, Dane <Wilson.Dane@epa.gov>

Sent: Wednesday, August 15, 2018 10:55 AM

To: John Hall <jhall@hall-associates.com>; Erin Thomas <ethomas@hall-associates.com>

Cc: Moore, Peter <Moore.Peter@epa.gov>

Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Mr. Hall,

During our clarification call, you stated that the request's chapeau was intended to limit the scope of requested items #1 and #2 to EPA Headquarters only. EPA Headquarters does not, generally, issue CWA enforcement orders. However, to make certain we did not issue anything that was responsive to this request in the last three years, we completed a search of our judicial consent decrees and our databases where any administrative order coming from EPA Headquarters would've been kept. We found no responsive documents for items #1 and #2 of the request.

The remaining responsive items are a result of the electronic document search. Of which, you have received a list of the first 100 documents and the releasable documents that were within the first 100.

The clock on this request is stopped until we receive word from you to continue processing the remaining electronic documents.

I hope you enjoy your vacation. I'm happy to discuss this further with you when you return.

Thank you,

Dane A. Wilson

Attorney - Advisor

U. S. Environmental Protection Agency

OECA - OCE - Water Enforcement Division

WJC South, Room 4116A

1200 Pennsylvania Avenue, NW

Mail Code: 2243A

Washington, DC 20460

(202) 564-0544

Wilson.Dane@epa.gov

From: John Hall [<mailto:jhall@hall-associates.com>]

Sent: Friday, August 10, 2018 2:19 PM

To: Wilson, Dane <Wilson.Dane@epa.gov>; Erin Thomas <ethomas@hall-associates.com>

Cc: Moore, Peter <Moore.Peter@epa.gov>

Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Dane,

This initial response is quite problematic and indicates to us that EPA did not process the request in the manner intended. I will be on vacation next week and will provide a further response when I return.

Where are the administrative orders or other enforcement actions that meet the first two document description requests? Those can't be predecisional as we previously discussed.

Thanks,

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

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From: Wilson, Dane <Wilson.Dane@epa.gov>

Sent: Thursday, August 09, 2018 3:05 PM

To: John Hall <jhall@hall-associates.com>; Erin Thomas <ethomas@hall-associates.com>

Cc: Moore, Peter <Moore.Peter@epa.gov>

Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Mr. Hall,

As previously discussed, per the direction of EPA's Office of General Counsel, please find attached two documents that provide the first 100 documents. The first is an Excel spreadsheet. Each line-item includes a document ID number, the date the document was created, a determination of its responsiveness, and its disposition status. The second is a PDF of the documents determined to be releasable that were within the first 100 documents.

After you've had a chance to review, please let us know if you would like us to restart the review clock and finish a second-level review of the remaining responsive documents. Again, the estimate to finish the entire review is \$1,064. If you do not want us to continue, we can begin the close-out process for this request.

Thank you,

Dane A. Wilson

Attorney - Advisor

U. S. Environmental Protection Agency

OECA - OCE - Water Enforcement Division

WJC South, Room 4116A

1200 Pennsylvania Avenue, NW

Mail Code: 2243A

Washington, DC 20460

(202) 564-0544

Wilson.Dane@epa.gov

From: Wilson, Dane

Sent: Thursday, August 02, 2018 3:40 PM

To: 'John Hall' <jhall@hall-associates.com>; Erin Thomas <ethomas@hall-associates.com>

Cc: Moore, Peter <Moore.Peter@epa.gov>

Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Mr. Hall,

There are currently no documents that have received a second-level review and would be releasable. However, yesterday I spoke with our Office of General Council about how to best proceed, and they requested that we provide the first 100 documents. Because we anticipated doing the entire first-level review before submitting the documents for second-level review, we did not have 100 documents ready to release.

I am arranging for a second-level review for the first 100 documents. After they have received second-level review, I will be able to release those documents to you. After you have had an opportunity to review, if you wish for us to proceed with processing the remaining portion of the request, we will need written assurance of payment of the estimated processing cost provided.

Thank you,

Dane A. Wilson
Attorney - Advisor
U. S. Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South, Room 4116A
1200 Pennsylvania Avenue, NW
Mail Code: 2243A
Washington, DC 20460
(202) 564-0544
Wilson.Dane@epa.gov

From: John Hall [<mailto:jhall@hall-associates.com>]
Sent: Thursday, August 02, 2018 3:27 PM
To: Wilson, Dane <Wilson.Dane@epa.gov>; Erin Thomas <ethomas@hall-associates.com>
Cc: Moore, Peter <Moore.Peter@epa.gov>
Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Dane

I do not believe that the Agency responded to my email below. Will EPA be providing the documents assessed thus far as requested, within the \$\$ limitation previously authorized?
Thanks,

John

John C. Hall
Hall & Associates
1620 I Street, NW, Suite 701
Washington, DC 20006
Phone: 202-463-1166
Fax: 202-463-4207
E-Mail: jhall@hall-associates.com

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From: John Hall
Sent: Wednesday, July 25, 2018 2:45 PM
To: Wilson, Dane <Wilson.Dane@epa.gov>; Erin Thomas <ethomas@hall-associates.com>
Cc: Moore, Peter <Moore.Peter@epa.gov>
Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Dane

Please give us what you will be releasing thus far so we can ensure that you are handling the request properly.

Thanks

John

John C. Hall
Hall & Associates
1620 I Street, NW, Suite 701
Washington, DC 20006
Phone: 202-463-1166
Fax: 202-463-4207
E-Mail: jhall@hall-associates.com

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From: Wilson, Dane <Wilson.Dane@epa.gov>
Sent: Wednesday, July 25, 2018 9:31 AM
To: Erin Thomas <ethomas@hall-associates.com>
Cc: John Hall <jhall@hall-associates.com>; Moore, Peter <Moore.Peter@epa.gov>
Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Good morning, Ms. Thomas.

I just wanted to send you a follow-up email and check in on this matter. Please advise if you want us to continue processing this request for the estimated amount of \$1,064.

Thank you,

Dane A. Wilson
Attorney - Advisor
U. S. Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South, Room 4116A
1200 Pennsylvania Avenue, NW
Mail Code: 2243A
Washington, DC 20460
(202) 564-0544
Wilson.Dane@epa.gov

From: Wilson, Dane

Sent: Monday, July 23, 2018 9:30 AM

To: 'Erin Thomas' <ethomas@hall-associates.com>

Cc: John Hall <jhall@hall-associates.com>; Moore, Peter <Moore.Peter@epa.gov>

Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Good morning, Ms. Thomas.

My colleague, Peter Moore, and I have been working very diligently to process these FOIA requests in time. However, we have exceeded the fee cap that you had included in your initial estimate. I will be stopping the clock on FOIAonline this morning until we get assurance from you that you would like us to continue reviewing the documents.

Currently, we have reviewed nearly 3,000 documents. We have nearly 1,500 documents to go.

Our office has spent approximately 28 hours processing, between physical and electronic searches, this FOIA. The rate for FOIA review is \$28/hour. The total cost of this FOIA is currently at \$784. I conservatively anticipate that it will take us another 10 hours to finish the remaining documents. The total cost of processing this FOIA will be at least \$1,064.

I am required to get your assurance of payment to continue processing these documents. Until that time, we will discontinue processing and wait for your response. While the clock is tolled, the deadline to respond is also tolled and extended.

Thank you so much for your time and attention to this issue. We await your direction.

Best wishes,

Dane A. Wilson

Attorney - Advisor

U. S. Environmental Protection Agency

OECA - OCE - Water Enforcement Division

WJC South, Room 4116A

1200 Pennsylvania Avenue, NW

Mail Code: 2243A

Washington, DC 20460

(202) 564-0544

Wilson.Dane@epa.gov

From: Erin Thomas [<mailto:ethomas@hall-associates.com>]

Sent: Tuesday, July 03, 2018 12:29 PM

To: Wilson, Dane <Wilson.Dane@epa.gov>

Cc: John Hall <jhall@hall-associates.com>

Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Good Afternoon Mr. Wilson,

Thank you for the follow up email regarding our clarification call yesterday, July 2, 2018 and taking the time to clarify this request.

There is one point I wanted to correct from your email this morning. Under point 4, the limited scope on enforcement order is in relation to items #1 and #2 as previously discussed, not items #2 and #3.

Please let me know if you have any further questions or issues regarding this request. Thank you again.

Best,

Erin Thomas

From: Wilson, Dane <Wilson.Dane@epa.gov>

Sent: Tuesday, July 03, 2018 9:57 AM

To: Erin Thomas <ethomas@hall-associates.com>

Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Good morning, Ms. Thomas.

Note: I drafted this email yesterday (7/2/18), but because of a network crash here, we were without internet all afternoon.

I wanted to thank you and Mr. Hall again for joining me this morning on the call. I appreciated your time, and I'm glad that we could get those few issues clarified. This email will also serve to memorialize the clarifications that were made with respect to this request.

Clarifications Made Concerning Request EPA-HQ-2018-008685:

1. **Stopping the clock:** The clock to respond to this request was stopped for the period of time between our email exchange below, when I requested the meeting to discuss clarification, to today. I have just restarted the clock on FOIAonline. The clock may be stopped from now on if we have fee-related issues or if we run up to the fee expenses allowed for in the request.
2. **FOIAonline 3.0:** This is not so much a clarification as a friendly reminder. I looked into this today. The legacy system will be available until tomorrow 7/3/18, and then we will be transitioning to the new system on 7/9/18. As I mentioned on the phone, if for some reason we run into issues with the system, I will continue to work directly with you through email and over the phone.
3. **Chapeau:** The requestor clarified that you did not mean for the chapeau that prefaced the three bulleted items in the request to limit the third item and that the requestor does want

the identified custodians in Region 2 searched.

4. **Limited Scope of Items #2 and #3:** The requestor mentioned below and again today on the phone that you would like to limit these items to enforcement orders. I asked to clarify if this meant judicial and administrative enforcement orders, and the requestor clarified that you meant any document (letter, notice, etc.) that would have the effect of an enforcement order.
5. **Item #3 “Associated with” versus “Discussing”:** On today’s call we discussed the difficulty and added expense, time and burden of collecting anything that may be ‘associated with’ the attached Administrative Order. Instead I advised that we changed that to “discussing” the attached AO. The requestor agreed that this would be a fine clarification.
6. **Item #3 Draft Versions:** This is to clarify that I did ask the requestor if they still wanted us to search for and review draft versions of this document, as it may potentially be withheld—in full or in part—under the Deliberative Process Privilege exemption. I noted that this would increase the cost and time to review these documents. The requestor is still interested in having this search completed and an index of the withheld documents made.
7. **Unusual Circumstances:** This FOIA will take a concerted effort between four EPA offices and Regions and approximately ten custodians. Because of that, we have applied the 10-day extension allowed under the statute.

After our call, I immediately submitted an electronic search of the electronic records of those that have been identified to me as potential custodians at EPA and Region 2—as this process can take several days to several weeks. I have asked for this search to be expedited, as I know that you are all particularly interested in the information in the third item in the request, and I know that Mr. Hall indicated that you may consider filing if we cannot complete the request within the allotted timeframe.

I will also begin searching our files at Headquarters for any enforcement order that may be potentially responsive to items one and two.

Please let me know if you have any questions during the processing of this request, and I will do my best to keep you apprised of our progress.

Thank you,

Dane A. Wilson
Attorney - Advisor
U. S. Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South, Room 4116A
1200 Pennsylvania Avenue, NW
Mail Code: 2243A
Washington, DC 20460
(202) 564-0544
Wilson.Dane@epa.gov

From: Erin Thomas [<mailto:ethomas@hall-associates.com>]
Sent: Monday, July 02, 2018 10:46 AM
To: Wilson, Dane <Wilson.Dane@epa.gov>
Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Good Morning Mr. Wilson,

Yes, that is the correct number for our office. Thank you for checking, I was actually in the process of sending you an email as well with our best contact information.

Erin

From: Wilson, Dane <Wilson.Dane@epa.gov>
Sent: Monday, July 02, 2018 10:42 AM
To: Erin Thomas <ethomas@hall-associates.com>
Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Ms. Thomas,

Will I be able to reach you at the (202) 463-1166 number provided on the request?

I apologize. Usually I'm able to pull contact information from FOIAonline, but it appears to be down for maintenance this morning.

Thank you,
Dane

From: Erin Thomas [<mailto:ethomas@hall-associates.com>]
Sent: Thursday, June 28, 2018 1:11 PM
To: Wilson, Dane <Wilson.Dane@epa.gov>
Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Mr. Wilson,

In an attempt to further clarify the records we are seeking in this request prior to our call on Monday, July 2nd at 11am, we would like to specifically request only enforcement orders, first, on items 1 and 2. That action should eliminate the need for email searches with regards to item 1 and 2.

Additionally, we request that you immediately process the PVSC administrative order request within item 3 as it is highly specific and therefore the record review should be prompt.

I am available at 11am EST on July 2, 2018 to schedule the proposed call to discuss any clarification.

Thank you for your expeditious response,

Erin Thomas

From: Wilson, Dane <Wilson.Dane@epa.gov>

Sent: Thursday, June 28, 2018 12:41 PM

To: Erin Thomas <ethomas@hall-associates.com>

Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Good afternoon, Ms. Thomas.

I would propose a call at 11:00am EST on July 2, 2018 to discuss the clarification.

To reach the cost estimate, I first identified the number of custodians of potentially responsive documents. We were able to create a list of ten individuals that may be in possession, either on the personal network drives or in email, of responsive documents. I held an initial meeting with all ten individuals on July 24, 2018 to discuss the processing of this FOIA request, where I asked how much time they thought they would need to search their personal drives, calendars, physical folders, and any other area that may potentially have responsive documents. The responses ranged from 1-3 hours.

Using a two-hour average, for ten individuals, at \$28 per hour, the fees associated with individual searches can reasonably be expected to total \$560.

Next, I asked the potential custodians how many documents that I would need to review that may be potentially responsive. This answer, necessarily, depends on our ability to clarify some key points during our upcoming call, but their answers ranged from a total of 250 to over 1,000—including potential duplicates. Normally, I can review between 50-100 documents an hour for the application of privilege. Based on these estimates, this process could take me anywhere from five to over twenty hours. This could cost anywhere from \$140 to over \$560.

Time spent duplicating, depending on the amount of physical documents that may exist, I expect will be low—as most documents generally are electronic.

There will also be fees associated with a second level review after I have reviewed and the time associated with create the index of any documents that were withheld. At this time, it is hard for me to estimate how much that may be. I will have a better idea after seeing the volume of documents and we've had a chance to discuss clarification.

So far we have spent six hours, or \$168, processing this FOIA.

Conservatively, I think it may cost in excess of \$1,000 to process this FOIA request. However, I am hoping that by clarifying the request, we can minimize these costs and provide the response as expeditiously as possible. We are also willing to work up to any fee limit you set. However, when that limit is met, the clock will be stopped for responding, and the agency will need written assurance of payment to increase the fee amount and continue working.

Please let me know if 11:00am July 2, 2018 will not work for your schedule. I can be available most any time between 10am and 3pm on Monday or 11am and 5pm on Tuesday.

As always, please let me know if you have any questions.

Thank you,

Dane A. Wilson
Attorney - Advisor
U. S. Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South, Room 4116A
1200 Pennsylvania Avenue, NW
Mail Code: 2243A
Washington, DC 20460
(202) 564-0544
Wilson.Dane@epa.gov

From: Erin Thomas [<mailto:ethomas@hall-associates.com>]
Sent: Thursday, June 28, 2018 11:34 AM
To: Wilson, Dane <Wilson.Dane@epa.gov>
Subject: RE: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Good Morning Mr. Wilson,

Thank you for reaching out regarding this request to clarify and reduce any potential burdens. I have attached a document including EPA records showing the EPA's enforcement position relating to blending from 2013 to assist you in the processing of this request. Additionally, I would like to request the basis, in advance of our call, for the estimated cost exceedance.

I am available on July 2nd and 3rd for the clarification call. Please let me know what time is most convenient for you and let me know if you have any other questions or issues regarding this request.

Best,

Erin Thomas

From: Wilson, Dane <Wilson.Dane@epa.gov>
Sent: Wednesday, June 27, 2018 12:22 PM
To: Erin Thomas <ethomas@hall-associates.com>
Subject: Clarification of FOIA Request Re: EPA-HQ-2018-008685

Greetings, Ms. Thomas.

I am the attorney working to process your FOIA request: EPA-HQ-2018-008685, where you have requested records located at EPA Headquarters for "Records Related to Enforcement Orders Regarding Blending."

I would like to set up a phone call to discuss a few points of clarification concerning your FOIA request. Additionally, I have done an initial fee estimate for the request. The estimate exceeds the \$250 limit that you have included in the request, based on the number of potential custodians and an estimate of the number of documents that an electronic search may produce for review. As always, we want to provide you an opportunity to limit the scope of the request to limit the fees associated with processing the request.

The goal of the call will be to clarify your requested search terms to best provide you with the information that would be most relevant to what you're seeking, while minimizing financial and administrative burdens. Until we have a call to clarify the request, the clock to respond to the request has been tolled. It will be restarted after we've had a chance to discuss the request and fees.

I will be in the office the week of July 2-6 every day except for Wednesday. I do not want to interfere with your Fourth of July holiday plans, but I would like to plan this call for the earliest date you're available on or after July 2, 2018 so that we may process this request and get any responsive documents that we may have to you as expeditiously as possible.

If you have any questions, please feel free to reach out to me by email or by phone at 202-564-0544.

Thank you,

Dane A. Wilson
Attorney - Advisor
U. S. Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South, Room 4116A
1200 Pennsylvania Avenue, NW
Mail Code: 2243A
Washington, DC 20460
(202) 564-0544
Wilson.Dane@epa.gov

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Exhibit 13

Blending Enforcement Orders Request Clarification Letter

HALL & ASSOCIATES

Suite 701

1620 I Street, NW

Washington, DC 20006-4033

Telephone: (202) 463-1166

Web: <http://www.hall-associates.com>

Fax: (202) 463-4207

Reply to E-mail:

jhall@hall-associates.com

August 29, 2018

Dane Wilson
Attorney - Advisor
U. S. Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South, Room 4116A
1200 Pennsylvania Avenue, NW
Mail Code: 2243A
Washington, DC 20460

RE: Processing of FOIA Request EPA-HQ-2018-008685 Regarding Regulation of Blending
as a Bypass in Enforcement Orders Issued after *Iowa League of Cities* Decision

Dear Mr. Wilson:

As you are aware, EPA has been processing the above referenced FOIA request since June 22, 2018. Several “clarification” discussions have occurred, and it is now apparent that EPA has not processed the request as written and apparently has no intention of identifying any releasable records discussing the substantive issue of concern related to the PVSC order – EPA’s decision to continue classifying blending as a bypass in all enforcement and permitting actions outside the 8th Circuit - under the assertion that all records are predecisional. This is at least the fourth time EPA has refused to disclose or identify the existence of documents in its possession in response to FOIA requests on the post-*Iowa League* blending issue. This letter constitutes our final attempt to have EPA properly process the request or we will be forced to take appropriate action to compel EPA to release the responsive, non-predecisional records in its possession. This letter also constitutes our assurance of payment, as sought by your email on August 29, 2018 (of course this payment assurance is premised on the assumption that EPA is processing the FOIA request as submitted and clarified herein, and not arbitrarily classifying all substantive post-decisional portions of PVSC order-related records as predecisional). The following provides the bases for our concerns with EPA’s processing of the FOIA request.

EPA’s Unilateral Reinterpretation of the Request was Improper

Following initial discussions, the Agency’s communications confirmed that EPA decided to unilaterally interpret the request to only seek copies of enforcement orders that do or would classify blending as a bypass to only cover such orders *issued by* EPA Headquarters, knowing

HALL & ASSOCIATES

that EPA Headquarters, in general, does not issue such documents. This misreading of the FOIA request was documented by your email dated August 15, 2018 which stated:

EPA Headquarters does not, generally, issue CWA enforcement orders. However, to make certain we did not issue anything that was responsive to this request in the last three years, we completed a search of our judicial consent decrees and our databases where any administrative order coming from EPA Headquarters would've been kept. We found no responsive documents for items #1 and #2 of the request.

This statement confirms that, the Agency unilaterally re-interpreted (narrowed) our request to only address enforcement orders *issued by* EPA Headquarters – knowing such documents do not exist. This arbitrary action avoided having to disclose any enforcement orders in EPA Headquarters' possession that continued to classify blending as a bypass after the *Iowa League* decision was rendered. One such enforcement order, admitted being in EPA Headquarters possession was the 2018 PVSC Order, which, on its face states blending is regulated as a bypass and must comply with the provisions of 40 CFR 122.41(m). The Agency's latest response to our concerns over improperly narrowing the FOIA request dated August 29, 2018 implied that the PVSC document would be identified only if H&A provides a \$1000 plus payment assurance. As noted in your latest email: "*we have conducted a search of civil judicial consent decrees and administrative orders, issued by EPA HQ or issued from a region and sent to EPA HQ. ...There are more documents that the initial review has deemed responsive that were not yet released, ...*" As EPA admits, it is presently withholding documents it deemed responsive under the initial review and cost assurance, therefore, those documents must now be released. Given your latest claim that all enforcement orders (regardless of origin) were already reviewed, no further payment should be required for EPA to identify which of these documents would continue to regulate blending as a bypass. This already completed review also admittedly included the PVSC order under Items 1 and 2. As previously noted in our discussions, none of the existing enforcement orders require any exemption assessment as they are all final agency records. Therefore, it cannot cost more to release those responsive documents related to Items 1 and 2 already reviewed under this FOIA, which you acknowledge possessing.

We would note further that we had specifically requested, and EPA agreed to first complete Items 1 and 2 of the request to ensure that costs would be contained. The Agency undertook that approach – therefore, the release of any enforcement orders in EPA Headquarters' possession fitting the description of Items 1 and 2 under the original cost assurance should now occur **IMMEDIATELY**.

Review of PVSC Related Correspondence May be Contained

Apparently, the 1000 plus records EPA has identified for further detailed review relate to EPA HQ's involvement in reviewing the PVSC enforcement order issued by EPA Region II in April 2018. We know EPA HQ was involved because of concerns over how PVSC's request to utilize blending to process greater CSO-related flows should be regulated. We also know the cast of EPA HQ employees that were involved in this discussion – as do you. Therefore, an extensive and possibly costly review of all records associated with EPA HQs involvement in the

HALL & ASSOCIATES

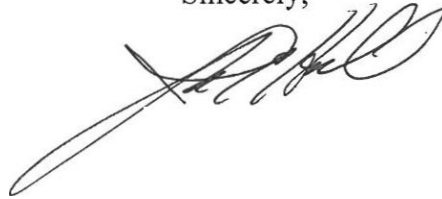
PVSC matter is unnecessary. *To be clear: We only want the records discussing whether blending at PVSC should be classified as a bypass, which cannot be a predecisional issue as EPA HQ had already determined in November 2013 that EPA would regulate blending as a bypass for all discharges outside the 8th Circuit. Please note that recently released FOIA documents (under court order) confirmed that the OECA expressly understood that it would continue to enforce blending as a bypass in all states outside the 8th Circuit. Therefore, the continued classification of any records discussing this issue as applied to PVSC cannot be predecisional – it was the express application of the working law of the agency and post-decisional. Moreover, any ongoing classification of documents discussing this issue as predecisional would imply bad faith implementation of FOIA given Judge Brown Jackson's decision in H&A v. EPA – which EPA did not appeal.*

Therefore, please only provide copies of PVSC-related records that discuss how or whether blending would be regulated as a bypass – which the final order does on its face.

Lastly, given the confusion created by EPA's action to date, please confirm that EPA will be proceeding as requested by:

1. Releasing copies of any enforcement action that would regulate blending as a bypass without any further demand for costs.
2. Limit the review of the PVSC-related documents to only those discussing the blending issue (an issue that is not predecisional).

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Ross', with a long, sweeping horizontal stroke extending to the left.

cc: David Ross, Assistant Administrator of Water

Exhibit 14

EPA Response to Blending Enforcement Orders Request



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

SEP 20 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Erin Thomas
Hall & Associates
1620 I Street NW, Suite 701
Washington, DC 20006

Re: Freedom of Information Act Request No. EPA-HQ-2018-008685, Final Response

Dear Ms. Thomas:

This letter is in reference to your Freedom of Information Act (FOIA) request received by the U.S. Environmental Protection Agency (EPA or Agency) on June 14, 2018 in which you requested any and all records at EPA HQ concerning: (1) any type of enforcement order or action where EPA was a party, within the past 3 years, that would or did classify blending as a bypass; (2) any type of enforcement order or action where EPA was a party, within the past 3 years, that indicated blending may be implemented as an interim measure; and (3) any and all documents, located at EPA Headquarters and EPA Region 2, associated with the attached Passaic Valley Sewerage Commission Administrative Order, including any draft versions of the attached Order. This request was clarified during phone and email correspondence, as detailed in the attached correspondence.

The Office of Enforcement and Compliance Assurance has concluded its search for records responsive to your request and is providing a portion of the protected records. Portions of the records you requested are being withheld pursuant to 5 U.S.C. § 552(b)(5), the Deliberative Process Privilege, the Attorney Client Privilege, and the Attorney Work Product Privilege. The records are exempt from disclosure because they are either pre-decisional and deliberative and would harm agency decision making if released, are confidential communications between an agency attorney and client concerning legal advice, and/or are documents prepared by, or at the direction of, an attorney in contemplation of litigation. The attached index of withholdings provides further information concerning the withheld records. The cost to process your request was \$1,064. Please see the attached invoice for billing and payment instructions.

This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address

your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals *received* after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (301) 837-1996 or (877) 684-6448; or fax, (301) 837-0348.

If you have any questions concerning this response please contact Dane Wilson of my staff at 202-564-0544.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Pollins", with a stylized flourish at the end.

Mark Pollins
Direct, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance
Assurance

Exhibit 15

Blending Enforcement Orders Request Appeal

HALL & ASSOCIATES

1620 I Street, NW
Suite 701
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207
Email: ethomas@hall-associates.com

December 18, 2018

Via Email

National Freedom of Information Officer
hq.foia@epa.gov
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: Appeal of FOIA EPA-HQ-2018-008685

To Whom This May Concern:

This letter constitutes an appeal of EPA's failure to provide responsive documents to FOIA request EPA-HQ-2018-008685, submitted by Hall & Associates ("H&A"). The basis of this appeal is discussed below.

On June 14, 2018, H&A submitted FOIA request EPA-HQ-2018-008685 (Attachment 1) seeking:

1. Any type of enforcement order or action where EPA was a party, within the past 3 years, that would or did classify blending as a bypass;
2. Any type of enforcement order or action where EPA was a party, within the past 3 years, that indicated blending may be implemented as an interim measure; and
3. Any and all documents, located at EPA Headquarters and EPA Region 2, associated with the attached Passaic Valley Sewerage Commission Administrative Order, including any draft versions of the attached Order.

The request provided the following background:

On March 7, 2018, EPA sent a letter to the Association of Environmental Authorities of New Jersey in response to their July 21, 2017 letter to EPA seeking clarification on the use of blending at wastewater treatment facilities. EPA stated that the agency "has not issued a nationwide policy on the use of blending in wastewater treatment, and it does not have a categorical position regarding how the agency's regulations apply with regard to blending outside the 8th Circuit in light of the court's decision in *Iowa League of Cities v. EPA*, 711 F.3d 844 (2013)."

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In EPA's September 20, 2018 final response, EPA provided four PDF compilations of responsive records and assessed a fee of \$1,064.00. EPA's final response letter claimed the redactions were deliberative process privileged (5 U.S.C. § 552(b)(5)) and were therefore withheld "because they are either pre-decisional and deliberative and would harm agency decision making if released, are confidential communications between an agency attorney and client concerning legal advice, and/or are documents prepared by, or at the direction of, an attorney in contemplation of litigation." While no redactions were identified in the 1,062 pages of released records, the final response letter claimed to include an "attached index of withholdings provid[ing] further information concerning the withheld records." However, this index was not attached to the final response letter and was never transmitted to H&A.

Pursuant to 40 C.F.R. § 2.104(j), H&A hereby appeals EPA's failure to fully and properly process H&A's FOIA Request EPA-HQ-2018-008685. Specifically, H&A appeals as arbitrary and capricious 1) EPA's withholding of entire responsive documents citing to 5 U.S.C. § 552(b), 2) EPA's failure to provide the index of withholdings described in the final response letter, 3) EPA's inadequate and incomplete search, and 4) the excessive assessed fees to obtain the responsive records under FOIA while failing to provide the index of withholdings. H&A cannot be required to pay fees for EPA's efforts focused on an attachment that was never provided.

EPA's failure to fully release the requested records cannot be pre-decisional or deliberative as they directly pertain to a final Agency decision (*see* D.C. District Court's May 22, 2018 decision in *Hall & Associates v. EPA*, Civil Action No. 15-cv-01055 (D.D.C.) that determined that the November 19, 2013 Desk Statement issued by EPA constituted "working law" and a final Agency decision regarding the blending prohibition vacated in *Iowa League of Cities v. USEPA*). All of the redactions discussing blending in the withheld records dated after November 19, 2013, the date of the final Agency decision, therefore cannot be deliberative process privileged and must be released in full. Those records confirmed that EPA's Office of Enforcement and Compliance Assurance had determined that blending would continue to be regulated as an illegal bypass.

Moreover, the document search was inadequate and incomplete. EPA provided evidence of easily a dozen internal meetings to discuss how blending would be regulated as a bypass at PVSC. No notes or materials from those numerous meetings were disclosed. Also, several released records referenced or denoted attachments, none of which were provided. These attachments must be released.

Based on the forgoing, EPA must 1) complete the processing of this FOIA, 2) release, in full, the redacted and withheld responsive records, and 3) revise the assessed fees to reflect a reasonable level of effort and time, taking into account the failure of EPA to provide the index described in

HALL & ASSOCIATES

the final response letter. If EPA does not do so within 20 days, H&A will have no other recourse but to pursue such relief in federal court.

Respectfully,

//s// Erin Thomas

Erin Thomas

Exhibit 16

EPA Response to 4-States Meeting Blending Announcement Request



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

Ms. Erin Thomas
Hall & Associates
Suite 701
1620 I Street, NW
Washington, DC 20006-4033

Re: Freedom of Information Act Request No. EPA-HQ-2018-008212

Dear Ms. Thomas:

This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by Region 7 of the U.S. Environmental Protection Agency (EPA or Agency) on May 31, 2018, in which you requested:

- 1) All records and correspondence concerning the November 2013 4-States Meeting transmitted between EPA HQ and EPA Region 7. Please limit the search to records and correspondence created on or after January 1, 2013.
- 2) All records at EPA HQ addressing, in any way, EPA HQ personnel attendance at the meeting, including travel authorization records.

The Agency has concluded its search for records responsive to your request and is providing a portion of the requested records. The EPA is releasing 18 records in full and withholding 6 records in part.

Records are being withheld pursuant to 5 U.S.C. § 552(b)(6) Personal Privacy. The records are exempt from disclosure because contain personal information which would be an unwarranted invasion of personal privacy if released.

This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2310A), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 5315, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of

the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Sincerely,

Sally Gutierrez, Acting Director
Water Permits Division

Exhibit 17

H&A Email on 4-States
Meeting Blending
Announcement Request

Erin Thomas

From: Erin Thomas
Sent: Friday, September 21, 2018 3:41 PM
To: brown.sineta@epa.gov; 'zipf.lynn@epa.gov'
Cc: John Hall
Subject: RE: EPA-HQ-2018-008212 Final Response

Good Afternoon,

After reviewing the final release of documents deemed responsive to the above referenced FOIA request, it is clear that the final response is facially deficient as it does not include the records sought:

- 1) All records and correspondence concerning the November 2013 4-States Meeting transmitted between EPA HQ and EPA Region 7. Please limit the search to records and correspondence created on or after January 1, 2013.
- 2) All records at EPA HQ addressing, in any way, EPA HQ personnel attendance at the meeting, including travel authorization records.

Specifically absent from this final response are any travel authorization records and there is virtually no correspondence concerning the meeting between EPA HQ and Region 7. There are no records regarding whether or why EPA was requested to come out to the referenced meeting. Please review this request fully and release all responsive records currently absent from this response.

Thank you,

Erin Thomas

From: brown.sineta@epa.gov <brown.sineta@epa.gov>
Sent: Friday, September 21, 2018 10:11 AM
To: Erin Thomas <ethomas@hall-associates.com>
Cc: Zipf.Lynn@epa.gov
Subject: EPA-HQ-2018-008212 Final Response

See attached letter.

Exhibit 18

4-States Meeting Blending Announcement Request Appeal

HALL & ASSOCIATES

1620 I Street, NW
Suite 701
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207
Email: ethomas@hall-associates.com

December 19, 2018

Via Email

National Freedom of Information Officer
hq.foia@epa.gov
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: Appeal of FOIA EPA-HQ-2018-008212

To Whom This May Concern:

This letter constitutes an appeal of EPA's failure to provide responsive documents to FOIA request EPA-HQ-2018-008212, submitted by Hall & Associates ("H&A"). The basis of this appeal is discussed below.

On May 31, 2018, H&A submitted FOIA request EPA-HQ-2018-008212 (Attachment 1) seeking:

- 1) All records and correspondence concerning the November 2013 4-States Meeting transmitted between EPA HQ and EPA Region 7. Please limit the search to records and correspondence created on or after January 1, 2013.
- 2) All records at EPA HQ addressing, in any way, EPA HQ personnel attendance at the meeting, including travel authorization records.

The request provided the following background:

On November 13, 2013, EPA personnel from Region VII and Headquarters attended the annual EPA Region VII "4-States" Governmental Affairs Meeting. At the "4-States" meeting, Mr. S. Neugeboren informed the regulated community and state permitting agencies present of the Agency's conclusions regarding the precedential scope of the *Iowa League of Cities v. EPA*, 711 F.3d 844 (8th Cir. 2013) ("*ILOC*"), ruling. The content of the Agency's statements at the "4 States" meeting regarding the applicability of the *ILOC* decision to future NPDES permitting decisions was reported in NWEA's *EffluentLine* newsletter.

HALL & ASSOCIATES

In EPA's September 21, 2018 final response, EPA provided 18 records in full and withheld 6 records in part. The final record release provided the 4-States Meeting attendance list and meeting minutes, EPA emails discussing travel arrangements for the meeting, EPA staff expense reports, and an H&A slideshow.

Pursuant to 40 C.F.R. § 2.104(j), H&A hereby appeals EPA's failure to fully and properly process H&A's FOIA Request EPA-HQ-2018-008212. Specifically, H&A appeals as arbitrary and capricious EPA's inadequate and incomplete search for records.

EPA's document search was clearly inadequate and incomplete. The request sought, inter alia, Agency personnel travel authorization records for the 4-States Meeting. EPA's *On The Go with EPA: A Reference Guide for Travel* (USEPA, 1990) states that "[a]n EPA form 2610-1, Travel Authorization (TA), must be issued and approved by your authorizing official and receive a document control number (DCN) for all travel outside of the defined local travel area where you are stationed." These travel authorization forms were explicitly requested and should have been included in the records release with redactions appropriate under FOIA (e.g., social security number). However, EPA's FOIA response included none such records, despite the presence of 17 EPA employees on the provided 4-States Meeting attendance list. Moreover, EPA's response did not include any correspondence explaining why EPA HQ staff was asked to attend the 4-States Meeting and why EPA HQ authorized several HQ personnel to attend, as requested by H&A. Therefore, EPA's FOIA response and records search were inadequate and incomplete.

Based on the forgoing, EPA must complete the search for and release of responsive records in properly processing this FOIA request. If EPA does not do so within 20 days, H&A will have no other recourse but to pursue such relief in federal court.

Respectfully,

//s// Erin Thomas

Erin Thomas